



**BOARD OF EQUALIZATION**

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: MARCH 26, 2003, TIME: 9:30 AM

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**ACTION ITEMS & STATUS REPORT ITEMS**

**Agenda Item No: 1**

**Title: Proposed Regulatory Changes Regarding Disposable Temperature Recording Devices**

**Issue/Topic:**

Should Regulation 1630, *Packers, Loaders and Shippers*, be amended to incorporate the Susan Lorie Tylock Memorandum Opinion dated February 25, 1999, regarding the application of tax to sales of disposable temperature recording devices?

**Committee Discussion:**

Action 1, Consent Items

There was no discussion on this item.

Action 2, Authorization to Publish

There was no discussion on this item.

**Committee Action/Recommendation/Direction:**

Action 1, Consent Items

The Committee approved all consent items.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of the amendments to Regulation 1630 as adopted in the above action. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1630 is attached.

Approved: /s/John Chiang  
Honorable John Chiang, Committee Chair

/s/James E. Speed  
James E. Speed, Executive Director

BOARD APPROVED

at the March 26, 2003 Board Meeting

/s/ Deborah Pellegrini  
Deborah Pellegrini, Chief  
Board Proceedings Division

**Regulation 1630. PACKERS, LOADERS, AND SHIPPERS**

*Reference:* Sections 6007, 6359.7, 6359.8, and 6364, Revenue and Taxation Code

**(a) IN GENERAL - DEFINITIONS.** Packers, loaders, and shippers (hereinafter collectively called “shippers”) purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:

(1) PROPERTY USED TO CONDITION THE GOODS FOR SHIPMENT OR TO PRESERVE AND PROTECT THE GOODS DURING SHIPMENT.

bracing materials	gas (including dispensers)
car strips	ice and dry ice
cleaning compounds	miscellaneous preservatives
degreasing compounds	rust preventing compounds
derusting compounds	salt
dunnage or “loose” lumber	solvents
(except as otherwise	tarpaulin (weather protection)
specified in (2) below)	

(2) PROPERTY USED AS CONTAINERS OR AS PARTS OF CONTAINERS OF THE GOODS SHIPPED.

bags	gummed tape
barrels	kegs
bottles	lumber (including “loose” lumber
boxes	used in the same manner and for
cans	the same purpose as pallets)
carboys	pallets
cartons	sacks
crates	strapping
cylinders	twine
drums	wrapping paper
excelsior and other packing	
and crating material	

(3) PROPERTY THAT WHEN PHYSICALLY INCORPORATED IN THE FINAL PRODUCT BEING SOLD IS A SALE FOR RESALE.

wax and fungicide	protective coatings
post harvest protective shields	salts, acids & caustics

**(b) APPLICATION OF TAX.**

(1) PROPERTY USED TO CONDITION, PRESERVE OR PROTECT GOODS DURING SHIPMENT.

**(A) General.** Tax applies to sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.

**(B) Ice, Carbon Dioxide and Preservatives.**

1. Ice. The sale or use of ice or dry ice used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the package that contains the carbon dioxide.

3. Preservatives. Tax does not apply to the sale or purchase of preservative products under the following two circumstances:

a. The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or similar products.

b. The preservative product serves a beneficial purpose in preserving the food product and remains in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.

**(2) PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED.**

**(A) General.** Tax applies to the sale or use of containers or container materials under the provisions of Regulation 1589, "Containers and Labels", (18 CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sale unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier of the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.

**(B) Carbon Dioxide.** Operative January 1, 1995, the sale or use of nonreturnable container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, whether or not the shipper is the seller of the fruits or vegetables.

**(C) Packing Food Products for Human Consumption.** Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.

(3) DISPOSABLE TEMPERATURE RECORDING DEVICES. The sale or storage, use or other consumption of a disposable temperature recording device in this state is subject to tax unless an exemption or exclusion from taxation applies. When a shipper of perishable food products purchases for resale a disposable temperature recording device for the sole purpose of shipping the device along with the products it ships, the shipper of the perishable food products does not make a taxable use of the disposable temperature recording device merely by starting the recording device in this state. If, pursuant to a perishable food product shipper's contract with its customer, the shipper provides a recording device along with perishable food products to an out-of-state point, the shipper's sale of the device constitutes an exempt sale in interstate commerce pursuant to Revenue and Taxation Code section 6396. The provisions of this paragraph do not, however, apply to the sale or lease of non-disposable temperature recording devices.

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